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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 ABSOLUTE SWINE INSEMINATION
11 CO., (H.K.) LIMITED, *et al.*,

12 Plaintiffs,

13 v.

14 ABSOLUTE SWINE INSEMINATION
15 CO., LLC., *et al.*,

16 Defendants.

Case No. 2:12-CV-00606-KJD-PAL

ORDER

17 Presently before the Court is Defendant Mark Anderson's Motion to Dismiss for Lack of
18 Subject Matter Jurisdiction (#33). Plaintiffs filed a response in opposition (#40) to which Defendant
19 Anderson replied (#45).

20 **I. Background and Relevant Facts**

21 Plaintiffs' complaint raises allegations that Defendants breached contracts and committed
22 various torts related to interference with existing and prospective contracts. Defendant Mark
23 Anderson ("Anderson") is a United States citizen. Anderson has resided in the Philippines almost
24 continuously since 2002. Each year from 2004 to 2011, Anderson has listed his address in the
25 Philippines on his federal tax returns as his place of residence. Further, for each of those years
26 except 2011, Anderson qualified for the foreign earned income tax exemption because his wages

1 were earned outside the United States. In 2011, Anderson spent part of the year in California seeking
 2 treatment for personal medical issues, and did not qualify for the exception. Though Anderson
 3 maintains a State of Nevada driver's license, he is registered as an alien with the Republic of the
 4 Philippines, and has been issued both an Alien Certificate of Registration and a driver's license.
 5 Further, Anderson does not maintain a residence in the United States, though he has relatives that
 6 live in California, does not own real property in the United States and does not own vehicles located
 7 or registered in the United States.

8 II. Subject Matter Jurisdiction

9 Under 28 U.S.C. § 1332(a):

10 district courts ... have original jurisdiction of all civil actions where the
 11 matter in controversy exceeds the sum or value of \$75,000, exclusive of
 12 interest and costs, and is between – (1) citizens of different States; (2)
 13 citizens of a State and citizens or subjects of a foreign state; (3) citizens of
 different States and in which citizens or subjects of a foreign state are
 additional parties; and (4) a foreign state, defined in section 1603 (a) of this
 title, as plaintiff and citizens of a State or of different States.

14 A natural person is deemed to be a citizen of the state where he is domiciled. See Gilbert v.
 15 David, 235 U.S. 561, 569 (1915). “In order to be a citizen of a State within the meaning of the
 16 diversity statute, a natural person must be both a citizen of the United States and be domiciled within
 17 the State.” Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826 (1989). An American citizen
 18 domiciled abroad, while being a citizen of the United States is, of course, not domiciled in a
 19 particular state, and therefore such a person is “stateless” for purposes of diversity jurisdiction. Id.
 20 Thus, American citizens living abroad cannot be sued (or sue) in federal court based on diversity
 21 jurisdiction as they are neither “citizens of a State,” see 28 U.S.C. § 1332(a)(1), nor “citizens or
 22 subjects of a foreign state,” see id. § 1332(a)(2); Newman-Green, 490 U.S. at 826.

23 Here, the Court finds that Defendant Anderson is domiciled in the Republic of the
 24 Philippines. Defendant has provided copious amounts of evidence demonstrating that at the time the
 25 complaint was filed he was domiciled in the Philippines. Not surprisingly, Plaintiffs have produced
 26 some evidence, in the form of sworn assertions by Plaintiff David Yang, that Anderson maintained

1 contact with his business associations in the United States, maintained a State of Nevada driver's
2 license, and received medical treatment in California (which Anderson readily admitted). However,
3 Plaintiffs produced almost no evidence of Anderson's residence in any state of the United States.
4 Anderson overwhelmingly established residence and domicile in the Philippines. Therefore, the
5 Court lacks subject matter jurisdiction over this matter. Though amendment may be allowed to
6 remedy defective jurisdictional allegations, amendment cannot cure defective jurisdictional facts. See
7 id. at 831-32. Thus, the Court grants the motion to dismiss.

8 III. Conclusion

9 Accordingly, IT IS HEREBY ORDERED that Defendant Mark Anderson's Motion to
10 Dismiss for Lack of Subject Matter Jurisdiction (#33) is **GRANTED without prejudice**;

11 IT IS FURTHER ORDERED that all other outstanding motions are **DENIED as moot**.

12 DATED this 25th day of February 2013.

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16 Kent J. Dawson
United States District Judge
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